



(916) 324-6594

November 18, 1985

Dear Mr. . . .

This is in reply to your letter of October 29, 1985 to Mr. Richard Ochsner concerning whether a change in ownership occurred under the following facts described in your letter:

Your client is successor to the owner of certain real property subject to a lease with an original term of 20 years, which ran from September 1, 1958 to August 31, 1978. That lease provided a series of options to extend the original lease term: two 10-year options, a succeeding 15-year option if certain construction work was performed, and two additional 10-year options. Assuming that each option was exercised, the extended lease term could potentially have run for 75 years, until August 31, 2033.

An amendment to the lease entered into on May 16, 1974 inserted an additional six years into the original lease term, so that it ran until August 31, 1984, rather than expiring in 1978. No change was made to the options to extend.

A Restatement of the Lease, which collected the original Lease and its various amendments into a single document, was executed on September 1, 1984 and recorded by your office on October 11, 1985.

Based on the foregoing facts, you ask whether a change in ownership occurred as a result of the execution and recordation of the Restatement of Lease. Revenue and Taxation Code* Section 61(c)(1) includes as a change in ownership "[t]he creation of a leasehold interest in taxable real property for a term of 35 years or more (including renewal options), the termination of a leasehold interest in taxable

* All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

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real property which had an original term of 35 years or more (including renewal options), and any transfer of a leasehold interest having a remaining term of 35 years or more (including renewal options);...."

Had Section 61(c) been in effect when the leasehold was created in 1958, there would have been a change in ownership at that time because it was the creation of a leasehold interest in taxable real property for a term of more than 35 years including renewal options. Amending the Lease in 1974 to add six years to the original term would not alter or affect that conclusion.

A change in ownership under Section 61(c)(1) could have occurred August 31, 1984 had there been no exercise of the first option to extend for ten years because there would have been a termination of a leasehold interest which had an original term of 35 years or more including renewal options. The facts set forth in your letter indicate that the Lease did not terminate at that time.

Also, although you have not provided us with copies of the documents in question to review, your characterization of the Restatement of Lease as a document "which collected the original Lease and its various amendments into a single document..." does not indicate that the leasehold interest created in 1958 was either terminated or transferred as a result of the execution or recordation of the Restatement of Lease. Accordingly, based on the foregoing, it is our view that the execution and recordation of the Restatement of Lease did not result in a change in ownership under Section 61(c)(1) or any other statutory provision implementing Article XIII A of the California Constitution.

Although we do not believe a change in ownership has occurred as a result of the execution and recordation of the Restatement of Lease, the assessor may nevertheless request a completed change in ownership statement after receiving a copy of it from the recorder. Please be aware that failure to timely file a complete change in ownership statement after such a written request can result in a penalty under Section 482 notwithstanding the fact that no change in ownership has occurred.

Very truly yours,

Eric F. Eisenlauer
Tax Counsel

EFE:fr

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